95-363

No.

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1995

DONALD CORRIGAN, JAMES STROVEN,
MICHAEL COOK, and WAYNE BUMSTEAD,

Petitioners

vs.

THE CITY OF NEWAYGO and CHARLENE A. CORRIGAN,
in her official capacity as City Clerk for the
City of Newaygo,

Respondents

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

RESPONDENTS, THE CITY OF NEWAYGO AND CHARLENE CORRIGAN'S, BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

I. **Whether a voter approved city charter provision disqualifying candidates for public office who have outstanding water, sewer or tax bills violates the Equal Protection Clause.**

II. **Whether a voter approved city charter provision disqualifying candidates for public office who have outstanding water, sewer or tax bills violates the First Amendment associational rights of disqualified candidates and their supporters.**

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STATEMENT OF THE CASE

For purposes of this petition, Respondents accept Petitioners' Statement of the Case as a description of this dispute's pertinent facts. Respondents agree that the Sixth Circuit Court of Appeals discussed the Third Circuit Court of Appeals case Deibler v. City of Rehoboth Beach, 790 F.2d 328 (3rd Cir. 1986), but reject Petitioners' contention that the Sixth Circuit decided this case on grounds similar to those upon which the Third Circuit decided Deibler. Respondents also note that the voters approved the provisions of the Newaygo City Charter.

ARGUMENT

In support of their request for review, Petitioners contend that the Sixth Circuit Court of Appeals' decision in Corrigan v. City of Newaygo, 55 F.3d 211 (6th Cir. 1995), upholding the constitutionality of the Newaygo City Charter's default provision, conflicts with the Third Circuit Court of Appeals' conclusion in Deibler v. City of Rehoboth Beach, 790 F.2d 328 (3rd Cir. 1986). However, the Sixth Circuit and Third Circuit reach their results based on different grounds. The Sixth Circuit accepts tax code enforcement, a rationale which the Third Circuit does not evaluate in Deibler, as a rational basis for the Newaygo City Charter's default provision. Nor does a substantial question of law present itself to this Court. Petitioners' contention that the Sixth Circuit erred in concluding that tax code enforcement constitutes a rational basis for the Newaygo City Charter and that the Newaygo City Charter does not violate Petitioners' right of free association, is without merit. The Court should deny this Petition.

I. The Sixth Circuit's Determination In Corrigan That Tax Code Enforcement Constitutes A Rational Basis For The Newaygo City Charter's Default Provision Does Not Conflict With The Third Circuit's Decision In Deibler.

The Third Circuit concludes in Deibler that neither lack of the "necessary commitment" to a municipality's well-being nor endangerment

of "public respect for city government" comprises sufficient justification for a default provision based upon tax delinquency in a city charter. Deibler, 790 F.2d at 334-336 (3rd Cir. 1986). While explaining that tax code enforcement alone supplies a rational basis for the default provision in Newaygo's City Charter, the Sixth Circuit states that it does not necessarily disagree with the Third Circuit's decision in Deibler.

> Although we conclude that the ordinance has a rational basis, we do not necessarily disagree with the Third Circuit that the ordinance is not well-tailored to accomplish the other objectives the defendant claims it does.... In light of the existence of one "rational basis" for the ordinance, we need not decide whether these three moral justifications for the ballot access restriction can survive rational basis review.

Corrigan, 55 F.3d at 1217 (6th Cir. 1995). The Corrigan Court does not contradict Deibler.

Relying on the additional basis that tax code enforcement provides sufficient grounds for the Newaygo City Charter default provision, the Sixth Circuit specifically declines to address the "moral justifications" at the core of the Third Circuit's decision in Deibler. Corrigan, 55 F.3d at 1217 (6th Cir. 1995). Petitioners correctly state that the Sixth Circuit "upheld a ballot access restriction functionally identical to the one struck down in Deibler" and that the Sixth Circuit "rejected the result in Deibler," but this creates no conflict between the Third and Sixth Circuits. The Sixth Circuit

cannot reject the Third Circuit's reasoning because the Sixth Circuit does not examine the merit of "moral justifications." The Corrigan opinion indicates that even if the Sixth Circuit had addressed these issues, it would have been sympathetic to the Third Circuit's viewpoint as expressed in Deibler. Contrary to Petitioner's contention, Corrigan engenders no conflict between the Third and Sixth Circuits, but comprises an independent review of a distinct issue.

It is also clear that the facts of Corrigan are distinct from those of Deibler because Mr. Deibler was in default consistent with his participation in a tax protest group. The District Court opinion notes that associational interests played an important role in Deibler, as Mr. Deibler's tax delinquency directly related to his participation in the political process. Corrigan v. City of Newaygo, No. 93-CV-582 12 (W.D. Mich. 1993). This case contains no such associational overtone as Petitioners' tax deliquency stemmed from neglect rather than political expression or poverty.

II. The Sixth Circuit Correctly Concludes That Tax Code Enforcement Constitutes A Rational Basis For The Newaygo City Charter's Default Provision.

According to Petitioners, the Sixth Circuit improperly concludes that the Newaygo City Charter's default provision rationally relates to the City of Newaygo's interest in tax code enforcment. The City of Newaygo

has a significant interest in administering the tax system and Petitioners admit that nobody can seriously challenge this contention. See United States v. Lee, 455 U.S. 252, 102 S.Ct 1051, 71 L.Ed.2d 127 (1982). Under Petitioners' analysis, the Sixth Circuit errs for two "fundamental reasons."

First, Petitioners state that "the Sixth Circuit's holding that the default provision is an 'incentive' to citizens to pay their taxes rests on the false assumption that a potential candidate would be current in his or her taxes but for the lack of such an incentive." The Sixth Circuit's holding rests on no such assumption. The Newaygo City Charter provides incentive, but does not insure success. Providing an inducement to act rather than a guarantee of action, Newaygo's City Charter need not insure that every tax delinquent be current in his or her obligations to the city, but only provide pressure in that direction.

Petitioners note that if a tax delinquent person lacks funds to pay, the default provision cannot aid the City of Newaygo in collecting these taxes. The Newaygo City Charter's default provision provides an inducement for residents, such as Mr. Cook, to avoid voluntarily assumed property tax obligations as well as water and sewer charges if they cannot pay. That this incentive did not induce Mr. Cook to prioritize in such a manner that he could timely pay his voluntarily assumed obligations to the City of Newaygo, does not make the Newaygo City Charter irrational.

Stating that clerical errors or lack of knowledge might improperly deny access to the ballot, Petitioners' argument again fails to distinguish between cure and prevention. The Newaygo City Charter provides Mr. Bumstead with an incentive to carefully address clerical matters, fully understand his tax obligations, and responsibly pay his tax liability. That this inducement did not actually motivate Mr. Bumstead to responsibly comply with the tax code does not make the Newaygo City Charter irrational. If so, every law would be irrational simply because it fails to achieve the legislature's intended behavior in every instance.

The Newaygo City Charter's default provision rationally relates to enforcing the tax code because it seeks to prevent tax delinquency, rather than cure it as Petitioners suggest is necessary. Though not dependent on its ability to cure tax delinquency for its rational basis, the default provision has precipitated immediate payment from several of the Petitioners. Unlike situations where a party is unable to meet the requirements of a default provision, Petitioners could pay but were originally unwilling to responsibly meet tax requirements. That Petitioners ignored voluntarily assumed responsibilities until it was too late to cure the consequences, does not make the default provision an irrational means of tax code enforcement.

Petitioners contend that Newaygo's City Charter contains a second "major flaw" because the default provision does not relate to qualifications

for city office. This contention is also without merit. The Sixth Circuit concludes that the City of Newaygo's restriction is rationally related to enforcment of the tax code. To have legitimacy, the Newaygo City Charter need only have a single rational basis. Petitioners' brief concedes that collecting taxes is a rational basis for governmental action. It is not necessary that the City of Newaygo direct its City Charter at improving the qualifications of candidates for city office. It is sufficient that the Newaygo City Charter enforce the tax system.

The Newaygo City Charter's default provision provides incentive for residents to fulfill their voluntarily assumed financial obligations to the City of Newaygo. Contrary to Petitioners' contention, the default provision's legitimacy rests neither upon its success as an inducement nor its contribution to producing quality candidates for city office, but upon the fact that it promotes the genuine governmental interest of enforcing the tax code. The Sixth Circuit properly concludes that the Newaygo City Charter default provision has a sufficient rational basis.

III. The Sixth Circuit Correctly Concludes That The Newaygo City Charter, By Disqualifying Delinquent Tax Debtors From Candidacy For City Office, Does Not Violate Petitioners' First Amendment Right To Free Association.

Petitioners claim to have associated based upon their opposition to Mayor Kowalski. In light of this alleged association, Petitioners argue that

the Sixth Circuit errs by concluding that the Newaygo City Charter does not abridge their First Amendment freedom of association right. Unlike cases such as Anderson v. Celebrezze, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed2d 547 (1983), in which this Court found exclusion of a candidate to violate a party's freedom of association, the Newaygo City Charter prevents neither the expression of Petitioners' political view, nor formation of groups promoting this political view.

The Sixth Circuit states that "the only potential associational interests at stake here would be those of residents who mistakenly failed to pay their taxes or water and sewer assessment, or those who were unable to do so," associational interests that are not part of Petitioners' objectives. Corrigan, 55 F.3d at 1215 (6th Cir. 1995). Mr. Corrigan and Mr. Stroven associate in opposition to Mayor Kowalski, not regarding issues of tax delinquency. The tax delinquency restriction does not depend on whether one favors or opposes Mr. Kowalski as mayor. The Newaygo City Charter in no way limits persons of petitioners' political views from participating in the political process, leaving no relationship between Newaygo's City Charter and Petitioners' political opposition to Mayor Kowalski.

CONCLUSION

Petitioners suggest that the Sixth Circuit errs in determining that the Newaygo City Charter rationally relates to the purpose of enforcing the tax

system and does not violate their freedom of association. The City of Newaygo asserts that the Sixth Circuit correctly concludes that enforcement of the tax structure is a rational basis for its City Charter's default provision, that the Sixth Circuit's decision harmonizes with, rather than contradicts the Third Circuit's decision in Deibler, and that the Sixth Circuit correctly concludes that the City of Newaygo's default provision does not violate Petitioners' right to freedom of association. The City of Newaygo requests that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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Dated: October 5, 1995

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